

My client strongly disagrees with many of the comments and assertions made in this amendment and wishes, as a matter of record, to express such concerns with the examiner. The principle issues are as follows:

#### AMENDMENT TO CLAIMS

Claim 15 (currently amended) is simply a restatement of original claim 10, such claim already being addressed and rejected by examiner in earlier examination. Furthermore, the use of the word "about" in this claim is surely vague, and goes to the heart of the many flaws and problems with this patent as issued.

Claim 51 (currently amended) again, is simply in essence a restatement of the original claim 15, such claim having been addressed and rejected by the examiner in earlier examination. Again, the word "about" shows a lack of clear definition of the claim. Furthermore, this amended claim as written goes back to the issue that language of this type might be manipulated to claim patent rights on all yellow beans, rather than a more appropriate narrowing of the claims to allow only protection on the material as per the deposited sample. Additionally, newly added comments that the seed may be stably reproduced, and that it is selected from a segregating population seem, at best, irrelevant to the initial part of the claim.

Claim 57 (currently amended) seeks to distinguish the shape of seeds from various positions within the pod. It would seem therefore that the seed exhibits no uniform shape, this we would contend is a degree of vagueness that would render the claim void.

#### REMARKS

Examiners Position that there is a prima facie case of invalidity under 35 U.S.C. Sec 112, 1<sup>st</sup> para

The position taken in the remarks truly is an attempt to cloud a straightforward issue. It is clear that the patent owner is unable to describe the deposit adequately since there is no clear definition. The patent owner concedes that, "the seeds represent a variety of genetic entities". While in the words of the patent owner "this genetic diversity is not surprising", this lack of definition as to the claimed invention places an undue burden on the rest of the agricultural community as to effectively knowing exactly what it is that the patent owner claims he has patent rights to.

The convoluted approach to overcoming the legitimate concerns of the examiner with respect to *University of California vs. Eli Lilly & Co*, it is clear that the examiner was not addressing issues related to the structure of cDNA, but rather was addressing the problems of heritability associated with the claims of the Enola patent.

It would seem that the person confused with the differences of the enabling requirement and the written description is the patent holder. The examiner is rightly indicating that